

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHEN JOHN CLAYTON, et al.,

Plaintiffs,

v.

DOES,

Defendants.

CASE NO. C23-1324JLR

ORDER

On September 8, 2023, the court issued an order to show cause why the case should not be dismissed for lack of subject matter jurisdiction. (OSC (Dkt. # 7).) The court noted that the face of the complaint makes unclear whether complete diversity is present between *pro se* Plaintiffs Stephen John Clayton and Christopher Stephen Clayton (collectively, “Plaintiffs”) and Defendants “Does” because Plaintiffs’ complaint does not include any allegations regarding the citizenship of the Does. (*Id.* at 2 (citing Compl. (Dkt. # 5))). “Absent allegations in the complaint that establish complete diversity, this

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1 court cannot hear Plaintiffs' claims." (*Id.* at 2-3.) Thus, the court ordered Plaintiffs to
2 provide information establishing the citizenship of the Does. (*Id.* at 3.)

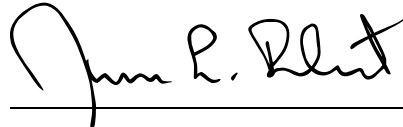
3 Plaintiffs timely responded to the court's show cause order by filing an amended
4 complaint. (Am. Compl. (Dkt. # 10).) Plaintiffs assert that they can only identify the
5 Does by their cryptocurrency transaction IDs and need to conduct third party discovery in
6 order to obtain the Does's actual identity and citizenship. (*Id.* at 5-7 (stating that
7 Plaintiffs intend to seek third party discovery from Binance Holdings Limited and
8 CEX.IO Corp.)) In light of the foregoing, the court concludes that Plaintiffs have failed
9 to establish the existence of complete diversity between the parties. (*See* OSC at 2-3.)
10 Therefore, the court does not have diversity jurisdiction over this action. *See Morris v.*
11 *Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001).

12 However, when Plaintiffs amended their complaint, they replaced their common
13 law claims with a claim under Section 4b of the Commodity Exchange Act ("CEA"), 7
14 U.S.C. § 6b. (*See* Am. Compl. at 5 (asserting that the court has federal question
15 jurisdiction).) 28 U.S.C. § 1331 provides that federal question jurisdiction exists when a
16 plaintiff's claim arises under the Constitution, laws, or treaties of the United States. *See*
17 *also Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987) ("[A] federal question [must
18 be] presented on the face of the plaintiff's properly pleaded complaint."). Thus, federal
19 question jurisdiction arises where "federal law creates a cause of action" or where "some
20 substantial, disputed question of federal law is a necessary element of one of the well-
21 pleaded state claims." *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002) (internal
22 quotation marks omitted). Because the amended complaint alleges that the Does violated

1 federal law and brings a claim under Section 4b of the CEA, the court finds that it has
2 federal question jurisdiction over this action.¹ *See also, e.g., Jing v. Sun*, No.
3 CV212350GRBAYS, 2022 WL 1505950, at *14 (E.D.N.Y. Jan. 4, 2022) (recognizing
4 that there is a private right of action under Section 4b of the CEA); *Merrill Lynch, Pierce,*
5 *Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 390-91 (1982) (holding that Section 4b of
6 the CEA gives rise to an implied private right of action).

7 In sum, although the court does not have diversity jurisdiction over this action, it
8 does have federal question jurisdiction. Therefore, the court DISCHARGES its order to
9 show cause (Dkt. # 7).

10 Dated this 12th day of September, 2023.

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13 JAMES L. ROBART
14 United States District Judge
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22 ¹ The court does not, at this stage, evaluate whether Plaintiffs have stated a plausible
claim for relief under Section 4b.